

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-00390-MSK-MEH

UNITED STATES OF AMERICA, and
STATE OF COLORADO, ex rel. John W. Suthers, Attorney General

Plaintiff,

v.

BELLA HOMES, LLC,
MARK STEPHEN DIAMOND,
DANIEL DAVID DELPIANO,
MICHAEL TERRELL,
DAVID DELPIANO
LAURA C. TABRIZIPOUR

Defendants.

STIPULATED PRELIMINARY INJUNCTION ORDER

THIS MATTER was set for a preliminary injunction hearing on February 22, 2012. The parties have advised the Court, as set out in detail below, of an agreement as to a stipulated preliminary injunction in this matter. Upon consideration of the agreement of the parties and for good cause shown the Court ORDERS that the Temporary Restraining Order entered on February 15, 2012 (Doc. 6) shall be converted into a Preliminary Injunction Order of this Court until final resolution of this case, as follows:

The Defendants have agreed not to contest the facts as set out in the Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction. Defendants neither admit nor deny such facts. Likewise the Defendants are not contesting the Court's previous findings on

jurisdiction, venue and have accepted service of process or have been personally served with the Complaint, Motion for Temporary Restraining Order and Preliminary Injunction, and Temporary Restraining Order. The Defendants are also not contesting the Court's legal findings supporting the issuance of the Temporary Restraining Order.

INJUNCTIVE PROVISIONS

Except as noted below, Defendants and those involved in active concert with them who are served with a copy of this Order are ENJOINED from:

1. Conducting or continuing to conduct business activities by or on behalf of Bella Homes, LLC, including but not limited to: (a) engaging in any action affecting real title to any property; (b) entering into any agreements relating to real property; (c) collecting, negotiating, or depositing any rental payments made by purported lessees of Bella Homes, LLC; (d) distributing or receiving disbursement of any funds from Bella Homes, LLC; and (e) advertising, promoting, or soliciting customers on behalf of Bella Homes, LLC.

2. Transferring, withdrawing, pledging, dissipating, or otherwise using or concealing funds of Bella Homes, LLC or funds received by any Defendant from Bella Homes, LLC in any accounts with any financial institution, including but not limited to:

Bella Homes, LLC accounts at Bank of America, Account Nos. XXXX XXXX 6182, XXXX XXXX 5975, and XXXX XXXX 5962;

3. Transferring, withdrawing, pledging, dissipating, or otherwise disposing of property of equivalent value to any property traceable to funds received by any Defendant from Bella Homes, LLC.

INSTRUCTIONS TO BANK OF AMERICA

All funds frozen pursuant to the Court's previous Order [Doc. 6] restraining bank

accounts shall be immediately released by Bank of America payable to the Colorado Department of Law, 1525 Sherman Street, Denver, Colorado 80203, to be held in trust, and any interest thereon, for purposes of consumer restitution and administrative expenses associated with this Order pending final resolution of this case or further orders from this Court. The following accounts apply to this Order and shall be released by Bank of America to the Colorado Department of Law, 1525 Sherman Street, Denver, Colorado 80203, as follows:

- All funds in the Bella Homes, LLC accounts at Bank of America, Account Nos. XXXX XXXX 6182, XXXX XXXX 5975, and XXXX XXXX 5962 in the total amount of \$384,332.81;
- All funds in the Mark Diamond accounts, including Diamond & Associates and Diamond Corporation, at Bank of America, Account Nos. XXXXX-X1114 (\$32,772.45), XXXX XXXX 1962 (\$28,209.01), XXXX XXXX 1190 (\$41,997.68); XXXX XXXX 5497 (\$2,987.12); and XXXX XXXX 5408 (\$1,065.60);
- All funds in the accounts of Daniel Delpiano under his Social Security number ending in XXX-XX-5497 at Bank of America, if any;
- All funds and property derived in any way from Bella Homes or equivalent value in the safe deposit boxes of David Delpiano under his Social Security number ending in XXX-XX-0790, to be opened by an agent of the United States, including the Federal Bureau of Investigation, upon notice to Bank of America and a representative of David Delpiano;
- Half of the funds in David Delpiano's Bank of America accounts XXX-XX-5896 and XXX-XX-8068 at Bank of America, returning the other half to the accounts; and
- Half of the funds in Michael Terrell's accounts at Bank of America, XXX XXXXX 8604 and XXX XXXXX 8414, returning the other half to the accounts.

After Bank of America transfers the above-referenced funds to the Colorado Department of Law, 1525 Sherman Street, Denver, Colorado 80203, the monies and property in the above-referenced accounts and safe deposit boxes that were previously subject to the freeze, Bank of America shall lift the freeze on all those accounts, which shall remain open and available to the Defendants for matters unrelated to Bella Homes, except the freeze on Bella Homes, LLC accounts at Bank of America, Account Nos. XXXX XXXX 6182, XXXX XXXX 5975, and XXXX XXXX 5962 shall remain in effect until further order from the Court. Any additional funds deposited or credited to that account shall be delivered by Bank of America to the Colorado Department of Law, 1525 Sherman Street, Denver, Colorado 80203.

DEFENDANTS' USE OF NON-BELLA HOMES' ACCOUNTS

Except for the Bella Homes' accounts, the accounts may be used by the Defendants in order to conduct their personal business while this case is litigated and will not be subject to further seizures in this case pending any further order by this Court.

ASSISTING HOMEOWNERS

The Defendants, to include Bella Homes, have agreed to assist the Plaintiffs in minimizing the harm to homeowners by undertaking efforts to support this goal, such as providing information and assisting in the correction of deed records. While this issue runs to the ultimate resolution of this matter, the parties recognize that any delay will detrimentally affect some homeowners. Therefore, the parties have agreed that Bella Homes will provide a list of all homeowners, including name, address, telephone number, and e-mail address, if available, presently in the Bella Homes program to the Plaintiffs no later than February 24, 2012 by 5:00 p.m. MST, and that the parties will work together to triage that list so that homeowners most affected and in need of immediate attention to either save their homes or negotiate with their lenders can do so expeditiously.

It is understood that the Plaintiffs will contact each of the homeowners by letter in order to notify them of this Order. As to all of these efforts, the parties are ORDERED to work cooperatively toward agreed upon resolutions and once agreement is reached and documented between the parties, such transactions may proceed with notification of the Court to be provided as deemed appropriate by the parties.

Additionally, the parties recognize that Bella Homes has properties in its program from around the United States and that the deed requirements vary from state to state. Bella Homes and all named Defendants agree, at the Plaintiffs' request, to assist in properly reversing deed transactions in a manner that is consistent with the law of each jurisdiction in which a Bella Homes property is located. Bella Homes agrees to execute a power of attorney to an agent designated by the Plaintiffs for the purpose of transferring deeds or otherwise voiding real property transactions. The parties understand and agree that time is of the essence with regard to the outstanding properties.

If any party determines that a Receiver becomes necessary to manage this process or distribution of funds to homeowners, the parties may notify the Court by motion. It is understood that Defendants object to any receivership.

Nothing in this Order shall preclude the entry of any further or final relief as the Court deems proper.

PRESERVATION OF RECORDS

It is further ORDERED, that all records presently in the possession, custody and control of Bella Homes or any of the individual Defendants relating to the business of Bella Homes will be preserved.

The Court initially restricted the pleadings in this matter until the Temporary Restraining Order could be heard. The Clerk is directed to unrestrict all pleadings in this matter and make the docket available to the public.

Dated this 22nd day of February, 2012.

Consented to by the parties as indicated below:

For the United States:
John F. Walsh, United States Attorney

/S/ *Jamie L. Mendelson*
Jamie L. Mendelson
Assistant United States Attorney

/S/ *J. Chris Larson*
J. Chris Larson
Assistant United States Attorney

For the State of Colorado
John W. Suthers, Attorney General

/S/ *Erik R. Neusch*
Erik R. Neusch
Assistant Attorney General

For Michael Terrell, David Delpiano and Laura C. Tabrizipour

/S/ *Patrick L. Ridley*
Patrick L. Ridley

For Bella Homes:

/S/ *Arthur W. Leach*
Arthur W. Leach
Admission Pending and submitted with the
Consent of the Plaintiffs

For Mark Stephen Diamond

/S/ *Richard L. Tegtmeier*
Richard L. Tegtmeier

For Daniel David Delpiano

/S/ *John M. Richilano*
John M Richilano